**LOW KOK TONG**

**v.**

**TEO CHAN PAN**

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
LAI KEW CHAI J
FA CHUA J
[CIVIL APPEAL NO. 57 OF 1981]
17 SEPTEMBER 1982

***CIVIL PROCEDURE:*** *Damage - Loss of future earnings - Fatal accident - Death due to injuries sustained in road accident - Claim by administrator of deceased's estate - Whether justified - Assessment - Whether meagre and contradictory.*

Low Eng Seah, 20, a national serviceman died of injuries sustained in a road accident. At the material time his gross salary was $122.47 and he had a savings account and a life insurance. He had prospects of becoming a warrant officer, grade 1. Before he joined the national service the deceased had worked as a shop assistant for a salary of $150 per month.

The administrator of his (deceased) estate made a claim for loss of future earnings. This was dismissed by the High Court on the grounds that the available evidence for assessment of damages was meagre and contradictory. He appealed against the judgment.

**Held:**

**[1]** The contradiction in the evidence was minor and does not stand in the way of an educated assessment of loss of earnings for the "lost years".

**[2]** A multiplier of 15 years at an earning after expenses of $150 per month was applied to award a total loss of future earnings for the "lost years" at $27,000.

*[Appeal allowed.]*

**Case referred to:**
*Gammell v. Wilson*

**Legislation referred to:**
Civil Law Act (Cap 30) [Sing], s. 8

*For the appellant - R. Karuppan Chettiar*
*For the respondent - Cheong Yuen Hee*

**JUDGMENT**

Low Eng Seah, a national serviceman, died from injuries he had sustained in an accident between a modest wage earner and that, after making allowance for his own living expenses, he would have retained an average of Pounds 416 a year. Applying a 16 year multiplier, the Judge arrived at Pounds 6,656 for loss of earnings.

In the second appeal, the deceased was 22 years old and in steady employment when he was killed at work. He was living at home and unmarried. The parents sued under the Act of 1934 and the trial Judge assessed loss of future earnings at Pounds 17,275.

The House of Lords held:

> (1) On the true construction of s. 1(2)(c) of the 1934 Act the restriction on an estate recovering or being deprived of a 'loss or gain to (the) estate' consequent on a person's death applied only to a loss or gain directly consequent on the death and not to a loss or gain resulting from a right to recover damages which vested in the deceased immediately before his death and which then passed to the beneficiaries of his estate, whether they were his dependants or not. That construction, coupled with the principle that a cause of action for loss of earnings in the lost years vested in the deceased before he died (and in the case of instantaneous death vested in him immediately before he died) meant that the estate was not precluded by s. 1(2)(c) from recovering damages for the deceased's loss of earnings during the lost years in a claim under the 1934 Act. Accordingly, even though it produced a result which was neither sensible nor just, the House was constrained to hold that the plaintiffs were entitled to the damages awarded for the lost years despite the fact that those damages far exceeded the amount to which they were entitled under the 1976 Act as dependents.

On the basis of our doctrine of binding precedents, it is axiomatic that any decision of the House of Lords is not binding on us. But such a decision on an English provision similar in all material respects with our own in highly persuasive and should be adopted unless it is unacceptable in principle. Although Lord Diplock and some other Law Lords had made certain reservations on the decision in *Gammell's* case and had called for legislative reforms, we would follow the *ratio decidendi* of that case and give s. 8 of our Civil Law Act, Cap. 30 a similar construction.

We now turn to the assessment of the loss of earnings during the "lost years" of Low Eng Seah, deceased. In *Gammell v. Wilson* (*supra*, at p. 593) Lord Scarman said:

> The correct approach in law to the assessment of damages in these cases presents, my Lords, no difficulty, though the assessment itself often will. The principle must be that the damages should be fair compensation for the loss suffered by the deceased in his lifetime. The appellants in *Gammells'* case were disposed to argue, by analogy with damages for loss of expectation of life, that, in the absence of cogent evidence of loss, the award should be a modest conventional sum. There is no room for a 'conventional' award in a case of alleged loss of earnings of the lost years. The loss is pecuniary. As such, it must be shown, on the facts found, to be at least capable of being estimated. If sufficient facts are established to enable the Court to avoid the fancies of speculation, even though not enabling it to reach mathematical certainty, the Court must make the best estimate it can. In civil litigation it is the balance of probabilities which matters. In the case of a young child, the lost years of earning capacity will ordinarily be so distant that assessment is mere speculation. No estimate being possible, no award, not even a 'conventional' award, should ordinarily be made. Even so, there will be a exception: a child television star, cut short in her prime at the age of five, might have a claim; it would depend on the evidence. A teenage boy or girl, however, as in *Gammell's* case may well be able to show either actual employment or real prospects, in either of which situation there will be an assessment claim. In the case of a young man, already in employment (as was young Mr. Furness), one would expect to find evidence on which a fair estimate of loss can be made. A man, well-established in life, like Mr. Pickett, will have no difficulty. But in all cases it is a matter of evidence and a reasonable estimate based on it.

Low was 20 years of age, in national service. But for the fatal accident, he would have enjoyed a normal expectation of life. As a soldier, his gross salary was $122.47. He had told his mother that he intended to sign on as a regular for six years. He had prospects of becoming a warrant officer, grade I. He was also attending night classes, taking an electrical course with a view to become an electrician. He showed a determination to get on. He had a savings account and a life insurance. Although they were very modest sums, the deceased

was evidently disposed to be provident. It should also be noted that the deceased had worked in a shop as an assistant and had earned $150 per month before he joined national service. We find that he would probably be a modest wage earner but for his premature death. His mother had said in evidence that the deceased was giving her $60 every month when he was in national service. On the other hand, admittedly, the father said in evidence that the deceased had from time to time asked his mother for money. The contradiction, in our view, was minor and, in all the circumstances, does not stand in the way of an educated assessment of the loss of earnings for the "lost years". Counsel for the appellant strongly urged us to apply a multiplier of 16 years with earnings ranging from $170 to $200 per month. We applied a multiplier of 15 years at an earning after expenses of $150 per month. We accordingly awarded $27,000 as the loss of future earnings for the "lost years".

We have, however, considered it necessary to state at the end of this judgment that the effect of our decision, reluctantly arrived at, could give rise to some undesirable consequences. It could be questioned with some justification why persons other than the actual dependants of a deceased should be unjustly enriched by an award to the estate for the "lost years". Lord Scarman in *Gammell's* case at p. 595 in fact also said:

> My Lords, there is some disquiet expressed by Judges, and understandably felt by insurers, about two aspects of the law; the 'double recovery' now possible in some cases, and the very great discrepancy which can arise, as happened in the Furness case, between the damages recoverable by the estate for the lost years and the damages recoverable by the dependants under the Fatal Accidents Act. Each of these possibilities may well be a mischief certainly, a law which allows the discrepancy to arise wears the appearance of anomaly, and is unlikely to be understood or acceptable.

All but one of the Law Lords in *Gammell's* case felt constrained to call for legislative intervention to reform the law in this regard. Lord Diplock at p. 583 expressed the following view;

> I join with your Lordships in thinking that it is too late for anything short of legislation to bring.. sense and justice to the law relating to damages for death recoverable by the estate of the deceased.

The U.K. Royal Commission on Civil Liability and Compensation for Personal Injury (Cmnd 7054-I, para. 435) has recommended:

> The loss of the victim's income in the lost years is in practice felt by those dependent on him. We think it is in their hands that the right to recover damages should lie.

It is the province of our legislature to reform the law.

Also found at [1982] CLJ 581